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EVALUATION OF THE PROGRAMME OF TECHNICAL COOPERATION ACTIVITIES ON COMPETITION LAW AND POLICY

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Annex I

Terms of reference for the evaluation of the programme of technical cooperation activities on competition law and policy

A. Background

1. The UNCTAD programme on competition law and policy contributes to the implementation of the organization's mandate in this regard, as stipulated in "A Partnership for Growth and Development" of UNCTAD IX (TD/377) (paragraphs 91-(iii) and 97(ii)), according to which UNCTAD is to assist developing countries and economies in transition in the formulation of competition policies and legislation; engage in institution-building; focus on Africa by holding a regional meeting; create relevant inventories and databases; and establish a technical cooperation programme which should focus on supporting strategies in promoting national competition and consumer protection law and policy formulation. In this context, a set of technical cooperation projects have been developed jointly with bilateral donors and regional organizations on matters related to competition policy. These projects have been conceptualized on the basis of the complementarity of functions and capacities between UNCTAD, recipient countries and competition authorities of developed and developing countries and taking into account *inter alia* the encouragement given by the Singapore Ministerial Conference of the World Trade Organization to cooperation between it and UNCTAD, in particular with regard to the development dimension. These developments reflect the interest of both developing and developed countries in promoting competition law and policy and international cooperation in this area. Future multilateral discussions require that policy makers and negotiators are as familiar and informed as possible with key issues concerning the development dimension of competition policy as well as with key concepts likely to be considered in the context of international cooperation.

2. Against this background, the UNCTAD work programme on competition policy is designed to build national capacity in developing countries, through training and advice. With a view towards consensus-building, the objective of the programme is to assist developing countries in formulating and enforcing national competition legislation and to participate as effectively as possible in multilateral discussions, including those relating to a possible international framework on competition policy.

B. Output and activities

3. The objectives of UNCTAD's technical cooperation activities on competition policy have been pursued with a two-track process that encompasses (i) the preparation of a series of *briefing papers/notes* on key issues/concepts related to competition policy and its development implications; and (ii) informal consensus-building activities in the form of seminars, regional symposiums and other training activities, involving numerous policy makers from developing countries. The beneficiaries of the activities planned under this programme include policy makers (regional symposiums participants)

and delegates to UNCTAD and the WTO (Geneva seminars participants), as well as junior diplomats and possible negotiators from developing countries (participants in the training workshops).

C. Purpose and scope of the evaluation

4. The evaluation of the programme is meant to provide in-depth assessment of the performance of the technical cooperation activities in terms of (i) adequately addressing the needs and expectations of beneficiaries (end users, i.e. competition agency officials, consumers and government officials); (ii) adequately and coherently fulfilling the goals and objectives set out for the technical cooperation activities; and (iii) adequately utilizing the funds provided for these activities. Special attention will be given to the evaluation of the impact the programme had on the end users.

5. In particular, the evaluation will establish whether the implementation of technical cooperation projects:

(a) Adequately addresses the needs and expectations of beneficiaries by:

* Considering whether the technical cooperation programme's concepts and design were appropriate in achieving its overall objectives;
* Identifying factors which impeded or facilitated the achievements of the project's objectives; and
* Studying the results and the impact of the programme, taking into account the views of the beneficiaries, donors and cooperating institutions;

(b) Adequately and coherently fulfils the goals and objectives set out for these projects by:

* Reviewing the quality of the material produced within the framework of the projects;
* Recording any significant lessons that can be drawn from the experience of the projects undertaken as part of technical cooperation activities, paying particular attention to the potential impact on capacity-building at both the country and regional levels; and
* Examining the relationship between these projects and other related programmes (within UNCTAD and such regional organizations as Mercosur, APEC, etc.) with a view to outlining the desirable contours of the programme and creating synergies;

(c) Adequately utilizes the funds provided for these technical assistance projects by:

* Assessing the present capacity of the team in delivering the projects;
* Assessing the programme's sustainability within the resources available to it;
* Making recommendations (including estimates of resource requirements) with regard to the future implementation of technical cooperation activities.

6. In terms of identified outputs, the evaluation process will commence with the design of appropriate assessment tools for each activity that will benchmark actual performances against expected results. For the *training materials* these will include a readership survey, questionnaire and peer review process that would provide judgements concerning the quality of content, presentation, usefulness,

quality of reference and dissemination of each paper. For workshops and seminars, regional symposiums and training courses these will include evaluation questionnaires, independent observer participation and bilateral interviews with participants.

D. Evaluation team and reporting

7. The evaluation will be conducted by an independent consultant with extensive experience in the activities of competition authorities and the concerns of the end users. The Programme, Planning and Assessment Unit, Executive Direction and Management, will provide methodological guidance as well as the necessary backstopping to the consultant and will designate a focal point for this purpose. The consultant will be responsible for the preparation of the report and for its presentation to the Working Party at its September 1999 session.

8. The consultant will be expected to follow the programme's activities in progress during the first half of 1999 and to this effect will be kept informed throughout the course of work programme implementation, so as to collect the required data which will enable him/her to accomplish the tasks. In particular, the secretariat will make available to him/her information concerning major events (such as regional symposiums), documentation prepared (such as the *technical papers*), and feedback received from beneficiary countries (such as questionnaires). In addition, the secretariat will seek to arrange for the consultant's participation in some of the programme's activities, such as seminars and regional symposiums, so as to allow him/her to gather information in the field necessary for the evaluation.

Annex II

Consultations undertaken

1. In March 1999, shortly after the commencement of the evaluation, discussions were held in Geneva with a number of mission representatives from countries which were either donors to the UNCTAD technical cooperation programme on competition law and policy or were recipients (or potential recipients) of such assistance.

2. The mission representatives consulted were from Dominican Republic, Ecuador, Kenya, Morocco, the Netherlands, Thailand, Tunisia, and Ukraine.

3. On the same visit to Geneva, discussions were held with a number of senior UNCTAD staff members, including those working directly on competition law and policy.

4. During May and June 1999, visits were undertaken to Malaysia, Tunisia, Morocco and Germany for in-depth discussions with officials directly involved in the formulation or implementation of competition legislation in developing countries. In selecting the countries to be visited, two main considerations were taken into account. First, it was considered important to visit a number of recipient countries which were at different stages of devising and implementing competition laws, ranging from those which had not yet passed such legislation to those where a competition authority had been in place for some years.

5. Secondly, it was also important to interview individuals and organizations with first-hand knowledge of UNCTAD's technical assistance programme in this area, including experts who had presented papers at UNCTAD seminars and those who had been offered advice and assistance by the UNCTAD team.

6. In June also, further discussions were held in Geneva, principally with the WTO and UNCTAD staff members. A particular focus of these discussions was the scope for greater inter- and intra-organization cooperation and collaboration.

7. Apart from the face-to face discussions mentioned above, questionnaires were sent to each of the UNCTAD member States inviting comments on several aspects of UNCTAD's technical cooperation programme. Copies of the questionnaires can be found in Annex III, where there is also a brief summary of the responses received from the 31 respondents.

Annex III

A. Questionnaires

A simplified version of the two questionnaires is attached. Questionnaire A was intended for countries which have been *recipients or are potential recipients* of technical cooperation assistance in the area of competition law and policy involving UNCTAD. Questionnaire B was intended for countries which have *provided* technical assistance or advice to developing countries or countries in transition in the area of competition law and policy. Some countries were both recipients and providers of such technical assistance and accordingly were kindly requested to complete both questionnaires.

1. Questionnaire for recipient countries

The UNCTAD secretariat's programme on competition law and policy is currently being evaluated at the request of its governing body, which will review the report in September 1999.

The evaluation is being conducted by an independent consultant, Prof. B. Johns (Australia). As part of the study, the consultant wishes to ascertain the views of officials in capitals in charge of and/or familiar with competition law and policy and UNCTAD's work in this area. The attached questionnaire has been prepared for that purpose.

It would be appreciated if replies to the questionnaire could be submitted as soon as possible and not later than 30 April 1999 to the address indicated in the questionnaire.

1. Does your country currently have in place legislation relating to:
   Restrictive (anti-competitive) business practices
   Consumer protection/Fair trading
   Business concentration or market dominance

For the purposes of this questionnaire, all of the above are regarded as "competition laws".

2. If you have answered "No" to any part of Question 1, please indicate whether it is likely that legislation of that type will be introduced in the next few years.

3. In addition to UNCTAD, what other countries or organizations have provided advice or assistance in the formulation or implementation of your country's competition laws? Please tick the relevant boxes: World Bank; WTO; OECD; Individual OECD countries. Please name them. Individual developing countries. Please name them. Other organizations. Please name them.

4. Does your country have a preferred external source of advice and assistance on competition laws and policy? Please specify the preferred source and give the reasons for that preference.

5. The principal forms of technical assistance provided by UNCTAD in the area of competition law and policy are listed below:

In the first column of boxes (under the heading ASSISTANCE RECEIVED), please tick if your country has received that type of technical assistance from UNCTAD.

In the second column (under the heading ORDER OF IMPORTANCE) please rank (from 1 to 7, 1 being the most important) those forms of technical assistance which you consider will make the greatest contribution to the promotion of competition in your country at its present stage of development.

(a) The provision of general information about the incidence of restrictive business practices and their adverse effects (including the organization of introductory seminars on the subject for those countries which have no competition laws in place as yet);

(b) Assistance with the drafting of competition and consumer protection laws;

(c) Assistance with the setting up of a competition/consumer protection authority;

(d) Assistance with the preparation of guidelines for business, indicating how they can comply with the competition laws and defend certain restrictive business practices because of the benefits they bring to the community;

(e) The training of personnel, including the training of investigative staff of the competition authority and seminars for competition authority members;

(f) The organization of regional seminars to promote the exchange of ideas and information between countries in the region about restrictive business practices and consumer protection issues;

(g) The provision of continuing advice on the implementation of competition laws and on possible amendments to the legislation which may become necessary.

6. Please indicate the extent to which *each type of assistance received* (as indicated in the answer to Question 5) has met the objectives established at the time it was requested. Circle the appropriate number in the range.
0 - objectives not met
5 - objectives fully met

In those cases where the objectives of the project were not fully realized, please indicate the reasons below.

7. Your answer to Question 5 indicated the forms of technical assistance that UNCTAD has provided to your country. Please indicate now how effective that *overall* assistance has been in fostering and maintaining competition in your country and improving protection for consumers.

8. In some cases UNCTAD may not have been able to provide the technical assistance in this area that your country requested or it may not have been able to fund the project at the level proposed.

Are you aware of the reasons for this outcome?
Are you satisfied with the explanations offered?
Was your country successful in obtaining the requisite funding for the project(s) from an alternative source?

9. What do you consider to be the principal strengths and weaknesses of the technical assistance programme provided by UNCTAD in the area of competition law and policy?

10. What changes would you like to see introduced in order to improve programme delivery by UNCTAD in meeting your country's needs:

(a) if there was no change in the total funds available for this activity?

(b) if there was scope for an increase in funding for this?

11. Are there any other ways in which UNCTAD through its technical cooperation programme could promote competition and consumer protection in your country and thereby facilitate development?

Please nominate the contact person who can provide further information about competition law and policy in your country and the value of the technical assistance provided by UNCTAD.

2. Questionnaire for donor countries

The UNCTAD secretariat's programme on competition law and policy is currently being evaluated at the request of its governing body, which will review the report in September 1999.

The evaluation is being conducted by an independent consultant, Prof. B. Johns (Australia). As part of the study, the consultant wishes to ascertain the views of officials in capitals in charge of and/or familiar with competition law and policy and UNCTAD's work in this area. The attached questionnaire has been prepared for that purpose.

It would be appreciated if replies to the questionnaire could be submitted as soon as possible and not later than 30 April 1999 to the address indicated in the questionnaire.

UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy, at their meeting in July 1998, took note with appreciation of the voluntary financial and other contributions received from member States and invited all member States to assist UNCTAD on a voluntary basis in its technical cooperation activities by providing experts, training facilities or financial resources; requested the UNCTAD secretariat to pursue its technical cooperation activities within the available resources, taking into account the deliberations and consultations that took place at that session; and invited the Secretary-General of UNCTAD to explore the feasibility of supporting training and capacity–building on a regional basis within the available resources.

1. Against this background, please indicate below the principal forms of assistance that your country/organization has provided to UNCTAD to assist developing countries in the formulation or implementation of their competition or consumer protection laws.

   Financial resources
   Training facilities
   Provision of experts
   Other (please specify)

2. Which other international organizations or individual countries are currently receiving assistance from your country in the formulation or implementation of competition or consumer protection laws?

   Please list countries or organizations in order of importance (i.e. according to the level of financial and other support provided by your country in the area of competition and consumer protection laws and policy). Please indicate for each country/organization the type of assistance provided (e.g. training of staff).

3. What do you consider to be the principal strengths and weaknesses of the technical assistance programme provided by UNCTAD in the area of competition and consumer protection law and policy?

4. Please indicate how the performance of UNCTAD in the area of competition law and policy compares with that of:

   (a) other technical assistance activities of UNCTAD;

   (b) other international organizations providing assistance to developing countries on competition policy, e.g. World Bank;

5. Has your country/organization been in a position where it could not accede to a request from UNCTAD to assist with a specific project related to competition or consumer protection in a developing country?

6. If YES, can you please indicate why? Please indicate the number of projects which could not be supported for the reasons described below:
The funds available for technical assistance had already been fully committed;
Other UNCTAD proposals were considered to be of higher priority;
The specific project was thought to be of little value;
The appropriate experts were not available at the time;
Other reasons (please specify).

7. Does your country/organization consider that the technical cooperation activities of UNCTAD in the area of competition law and policy provide "good value for money"overall?

8. What changes (if any) would your country/organization like to see introduced to improve the programme delivery in this area?

   (a) in the geographical allocation of UNCTAD assistance (please give details)

   (b) in the functional allocation of UNCTAD assistance (e.g. more emphasis on training and capacity-building) (please give details)

   (c) in the degree of cooperation between international organizations involved in this activity (UNCTAD, World Bank, OECD and WTO) (please give details)

   (d) in the reporting by UNCTAD of the impact of its work on competition in the developing countries (please give details)

   (e) in the documents and the material made available by UNCTAD to developing countries contemplating the introduction of competition laws (please give details)

   (f) in any other matters (Please specify and give details)

9. If the main changes you have suggested in the answer to question 8 were implemented, is it likely that your country/organization would increase the level of assistance that it provides for UNCTAD activities in this area?

B. Summary of responses

Overall, responses to the questionnaire were received from 31 countries. Nine of these were developed countries which were actual or prospective donors. They completed questionnaire B.

Most of the 22 developing countries who completed questionnaire A had received some form of technical assistance on competition law and policy from UNCTAD. A few had not yet requested such assistance or said that they had not been offered assistance which they had asked for.

Analysis of the replies to questionnaire A

Question 1: Of the 20 developing countries that replied to this question, 9 do not yet have legislation in place relating to restrictive business practices. However, all of them indicated that such legislation was likely to be introduced in the next few years. (Question 2)

Question 3: Most respondents had received advice or assistance on the formulation or implementation of competition laws from more than one source. Often bilateral assistance was provided by a country with which the developing nation had special links of language or culture, while multilateral assistance came from an international organization such as UNCTAD, the World Bank or the European Commission. Apart from UNCTAD, the World Bank was cited most often as a source of advice and assistance, mentioned by 8 responding countries.

Question 4: Only 10 countries expressed a preference for a particular source of advice or assistance. Of these, 6 indicated that their preferred source was UNCTAD. No other source was preferred by more than one recipient country.

Question 5: Thirteen countries stated that they had received advice or assistance from UNCTAD in the area of competition law and policy. Of these, 10 had received introductory seminars and general information about the incidence and effects of restrictive business practices, while 9 indicated that their representatives had participated in regional seminars organized by UNCTAD. Very few nominated any other forms of assistance which they had received from UNCTAD. When asked about which forms of assistance they thought would make the greatest contribution to the promotion of competition in their country at its present stage of development, the highest priority rankings were given to training and assistance with the drafting of competition and consumer protection laws.

Question 6: Respondents were asked to indicate, on a scale of 0 to 5, to what extent the UNCTAD assistance provided to their country had met the objectives established at the time. (where 5 indicates that all the objectives were fully met). A separate score was to be recorded for each type of assistance received. All scores were in the range of 3 - 5, with half of the 12 countries that responded reporting that at least one type of assistance they had received was at the top end of the scale. Most of the countries that replied to this question had only received assistance in the form of an introductory seminar. Those who thought that the objectives of the seminar had not been met completely generally explained that they would have preferred more detailed discussion and greater attention to alleged restrictive business practices that were thought to be prevalent in their own countries.

Question 7: When asked to indicate how effective the assistance had been in maintaining competition and improving consumer protection in the country concerned, most respondents said that it had been effective, particularly in increasing awareness of competition-related issues, in creating a competitive culture or in facilitating the drafting of competition legislation.

Question 8: This question was directed only at countries which had been unable to obtain the technical assistance they had requested from UNCTAD, whether it be initial or follow-up assistance. The three respondent countries who were in this position stated that they were not aware of the reasons for their lack of success or were not satisfied with the explanations offered. None had been able to find the requisite assistance from an alternative source.

Question 9: Among the strengths of the programme identified in the answers to this question were the following:

a) UNCTAD was perceived as a neutral organization, sensitive to the needs and aspirations of developing countries;

b) The seminars provided a useful forum for the exchange of views on competition laws and policy;

c) The professionalism and high standard of organisation evident at the seminars.

Among the weaknesses:

a) Too little advance notice of forthcoming seminars;

b) Two-day seminars were too short to be fully effective;

c) More case studies relating to developing countries should be discussed;

d) More specialist working groups are needed.

Questions 10 and 11: While relatively few respondents answered these questions, several thought that the assistance programme should increase the emphasis on training, particularly if it were possible to increase the funding available for the programme.

Analysis of the replies to questionnaire B

Question 1 : All but two of the nine respondent countries indicated that they had provided assistance to UNCTAD to further the technical assistance programme on competition law and policy. In most cases the assistance took the form of providing the services of experts in the field, but three had provided financial assistance.

Question 2 : Nearly all the respondents indicated that their countries were providing some assistance to other organizations or countries in the formulation or implementation of competition or consumer protection laws. In most cases this took the form of bilateral assistance to developing countries or countries in transition in the same geographical area. For example,

the Scandinavian countries are focusing particularly on assistance to the Baltic States and some of the Central European countries; the Czech Republic, on Romania and Croatia.

Question 3 : The principal strengths of the programme identified by the respondents were:

a) UNCTAD's special knowledge of and experience in assistance to developing countries, particularly recipient countries in Africa and Asia which are in the first stages of introducing competition policy and institutions;

b) The technical competence of the UNCTAD team.

The weaknesses mentioned included:

a) More information should be available on the Internet;

b) Insufficient notice was given to donor countries of projects that they might support.

Question 4 : Only three countries replied to this question. The general opinion of the respondents was that the performance of UNCTAD in the area of competition law and policy was similar to that of other international organizations providing such assistance (e.g. the World Bank).

Questions 5 and 6 : Four countries indicated that they had not been able to accede to a request from UNCTAD to assist with a specific project relating to competition or consumer protection. This was generally because the funds had already been committed or because the relevant experts were not available at the time.

Question 7 : Four countries responded to this question. Three considered that the programme provided "good value for money" and one did not.

Question 8 : A number of positive suggestions for change were made in the replies to this question. While most respondents did not question the geographical allocation of UNCTAD assistance on competition law and policy, one respondent argued in favour of a greater effort in Latin America.

In relation to the functional allocation of UNCTAD assistance, several countries considered that more emphasis should be placed on capacity-building, such as the establishment of an effective competition authority, and on techniques for enforcing the competition laws. Also, one respondent considered that national activities should be given more emphasis than regional or subregional activities.

The need for better cooperation among the international organizations providing technical assistance on competition policy was emphasized by several respondents. It was suggested that

improved communication between the various agencies would not be costly to achieve but would diminish the risk of duplication of effort and improve the allocation of resources.

Some respondents suggested that there should be more reporting of the impact of the programme on competition and that more material should be available on the Internet relating to the history of competition legislation in some developed countries.

Question 9 : Three respondents indicated that their countries would be likely to increase the level of assistance provided to UNCTAD for activities in this area, if the changes they proposed in answer to Question 8 were implemented.